IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

WRIT PETITON NO. 1174 (MS) OF 2003

Rajendra ……..……..Petitioner.

Versus

Deputy Director of Consolidation/Deputy Collector, Haridwar & others. ……Respondents.

HON'BLE RAJESH TANDON J.

Heard Sri Siddhartha Shah, learned Counsel for the petitioner and Mr. P. Saini, counsel for the respondents.

Both the parties have agreed that the Writ Petition be decided finally.

By this Writ Petition, the petitioner has prayed for quashing of the orders dated 31st August, 2002 and 11th November, 2003.

Briefly stated on 2nd November, 1995, the Consolidation Officer, Roorkee passed an order in Case No. 476 of 1995 to the effect that Gata Nos. ½ Area 3-17-13 of Village Mehmoodpur , which is the property of the Gram Sabha may be deleted and the same may be recorded in the name of the petitioner as Bhoomidhar and Gata Nos. 4/2 area 4-9 standing in the name of the petitioner may be deleted and recorded in the name of Gram Sabha as well as Gata of Village Mehmoodpur bearing no. 1/2 area 3-3-7, 1/3 area 2-4-6 and 9/7 area 1-6-7 total area 6-14-0 property in the name of the Gram Sabha be directed to be deleted and recorded in the name of the petitioner and the petitioner's original holding's Gata No. 100 situated in the Village Mehmoodpur may be deleted and recorded in the name of Gram Sabha.

Aggrieved against the aforesaid order, the respondents no. 3, 4 and 5 preferred an appeal before the Court of respondent no. 2 praying for quashing of the said order. The said appeal was registered an Appeal No. 1103 of 1996.

Counsel for the petitioner has submitted that the aforesaid appeal was not maintainable in as much as it was not properly verified and signed by the person by whom the appeal has to be field and as such he filed an application for dismissal of the appeal on 8th of May, 2002.

On the said application an order was passed on 31st August, 2002 to the following effect:-

''आज पत्रावली पेश हुई पक्षों को पुकार करायी गयी है। प्रतिपक्ष कैप्टन विनय कुमार भाटिया द्वारा प्रस्तुत प्रार्थना पत्र दिनांक 8/5/2002 को निरस्त किया जाता है,, क्योंकि रिवेन्यू बोर्ड 1998 पैरा नम्बर 3 में स्पष्ट उल्लेख किया गया है कि क्षुब्ध व्यक्ति कौन ग्राम सभा की सम्पत्ति ग्राम सभा के हित को सुरक्षा हेतु चाराजोई करने का पूर्ण अधिकार हर गांव सभा निवासी को है। इस प्रकार उक्त प्रार्थना पत्र निराधार है।

अतः पत्रावली वास्ते बहस गुण दोष दिनांक 6.9.2002 को पेश हो।''

In the mean time the petitioner has approached to the Revision Authority under Section 48 of the Consolidation of Holding Act by filing a Revision. The Revisional Authority has sent back the matter to the appellate authority with the following directions:-

"उपरोक्त विवेचना के आधार पर प्रस्तुत निगरानी बलहीन होने पर पोषणीय न होने के कारण निरस्त की जाती है। अवर न्यायालय के अभिलेख वापस किये जाये। अवर न्यायालय स0 बन्दोबस्त अधिकारी चकबन्दी को निर्देशित किया जाता है कि वह वाद का निस्तारण उभय पक्षों को सुनवाई का अवसर देकर दो सप्ताह के अन्दर गुण दोष के आधार पर करना सुनिश्चित करें।

पत्रावली बाद आवश्यक कार्यवाही दखिल दफतर की जावे।"

I do not find any infirmity in the order passed by the Revisional Court while sending the matter back to the Appellate Authority except with the modification that the appellate authority shall also inquire as to whether the appeal was legally maintainable or not. Liberty is given to both the parties to argue with regard to the maintainability of the appeal. However, if

there is any defect in the appeal, liberty is given to rectify the mistake, if any.

Subject to the aforesaid observation, the Writ Petition is disposed of. However, during the pendency of the proceedings, the petitioner shall continue in possession.

(Rajesh Tandon J.)

04.10.2004
P.S. Rathour